



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

Issued by the Department of Transportation
on the 28th day of August, 1998

Served August 28, 1998

Air Transport International, Inc.

**Violations of 49 U.S.C. § 41708
and 14 CFR Part 241**

CONSENT ORDER

This consent order concerns reporting delinquencies by Air Transport International, Inc. ("Air Transport International" or "ATI") that constitute violations of 49 U.S.C. § 41708 and the accounting and reporting requirements specified in 14 CFR Part 241. This order directs Air Transport International to cease and desist from future violations and to pay a compromise civil penalty.

The Department uses carriers' reports to monitor carrier fitness and ownership, to analyze the effects of air transportation industry policy initiatives, to allocate airport development funds, to forecast traffic, and to develop airport and airway traffic policy. A carrier's failure to file its reports prevents the Department from making fully informed decisions. Failure to file reports when they are due also constitutes a violation of both 49 U.S.C. § 41708 and the applicable Department regulations.

Air Transport International has failed to file required reports on time on numerous occasions in the past two years.¹ During this period, the Department's staff sent Air Transport

¹ Even earlier, on June 28, 1993, the Office of Aviation Enforcement and Proceedings (Enforcement Office) sent a warning letter to Air Transport International regarding its pattern of delinquent reporting. Air Transport International was warned at that time that any future failure to file required reports on time would likely result in enforcement action.

International numerous warning letters about its delinquencies. In this regard, the Department's Office of Airline Information (OAI) sent Air Transport International warning letters about delinquent T-100 reports on December 10, 1996, and January 14, February 20 and April 9, 1997. Air Transport International's delinquencies nonetheless recurred. More specifically, as of November 6, 1997, 26 overdue reports going back to June 1997 were an average of 86 days late. Although those reports were eventually filed, new delinquencies occurred. Between January 1997 and May 1998, Air Transport International filed 78 percent of its reports (100 reports) an average of 40 days late. As of May 6, 1998, four additional Form 41 reports were an average of 53 days late.²

In mitigation, Air Transport International states that its personnel responsible for filing the reports at issue changed twice during 1997 and 1998. The financial distress in which the company found itself resulted in its filing for reorganization under the U.S. Bankruptcy Code on February 3, 1998 in the U.S. Bankruptcy Court for the District of Nevada (Reno). The Debtor's First Amended Plan of Reorganization (the "Plan") was confirmed on April 20, 1998, and became effective on April 30, 1998. On the Effective Date, the current management assumed control. Pursuant to the Plan, the ATI Creditor Trust (the "Trust") was created to, among other things, administer the assets turned over to it under the Plan, reconcile all claims and make distribution to creditors. The Trust is administered by its Trustee, David W. Allard (the "Trustee") at the direction of the Post-Effective Date Committee. According to the carrier, when financial issues from the transition out of bankruptcy were sufficiently settled, all overdue reports were promptly filed with the Department. The carrier also states that a new controller has been hired by the new management and with the assistance of a financial consulting firm ATI has established a staff capability to assure continued timely filing of the required reports. ATI's management states that it is committed to compliance with DOT regulations.

The Enforcement Office has carefully considered the information provided by Air Transport International but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and Air Transport International have reached a settlement of this matter. In order to avoid litigation, and without admitting or denying the alleged violations, Air Transport International consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41708 and Part 241 of the Department's regulations and to the assessment of \$50,000 in compromise of potential civil penalties, payable according to ordering paragraph 5, below. The payment provisions of this order have been fashioned to take account of the carrier's bankruptcy proceeding, and the fact that the violations covered by this order primarily occurred prior to the bankruptcy filing. The assessment of this compromise civil penalty is accepted as a pre-petition general

² Air Transport International has now filed all of its delinquent reports.

unsecured claim in the carrier's bankruptcy proceeding.³ The Enforcement Office acknowledges that neither it nor this order holds the Creditor's Trust, the Trustee, or the individual members of the Post-Effective Date Committee, responsible for causing any of the violations that are the subject of this order.

We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's reporting requirements by Air Transport International, as well as by other air carriers and foreign air carriers.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Air Transport International, Inc. has violated 14 CFR Part 241 by failing to file required reports in a timely manner;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2 above, Air Transport International, Inc. has also violated 49 U.S.C. § 41708;
4. Air Transport International, Inc., and all other entities owned or controlled by or under common ownership with Air Transport International, Inc., and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. § 41708 and Part 241 of the Department's regulations; and,
5. Air Transport International, Inc. is assessed \$50,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above. The assessed compromise penalty shall become due on the effective date of this order. It shall be treated as a pre-petition general unsecured claim in Air Transport International, Inc.'s bankruptcy proceeding in the U.S. Bankruptcy Court for the District of Nevada (Reno), and it shall be paid in accordance with the applicable provisions of the Bankruptcy Code, the first amended plan of reorganization of ATI, and the instructions of that court.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion, or the Bankruptcy Court disapproves this agreement.

³ The Department's pending general unsecured and administrative (pre-petition and post-petition) claims on file with the Bankruptcy Court will be amended to reflect the terms of this agreement.

BY:

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